

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	
)	
Pine Cellular Phones, Inc. Petition for Agreement No. 96-45)	CC Docket
With Redefinition of Service Area of Alltel)	
Oklahoma, Inc. in the State of Oklahoma)	
Pursuant to 47 C.F.R. § 54.207(c))	

PINE CELLULAR PHONES, INC.
PETITION FOR AGREEMENT WITH REDEFINITION OF SERVICE AREA
OF
ALLTEL OKLAHOMA, INC.

Kimberly K. Brown
KIMBERLY K. BROWN, P.C.
2212 N.W. 50th, Suite 165
OKLAHOMA CITY, OK 73112
TELEPHONE: (405) 286-3094

ATTORNEY FOR PINE CELLULAR PHONES, INC.

September 7, 2006

SUMMARY

Pine Cellular Phones, Inc. ("Pine Cellular") hereby seeks the Federal Communications Commission's ("Commission") agreement, pursuant to 47 C.F.R. § 54.207(c), with the redefinition of the service area requirement approved by the Oklahoma Corporation Commission ("OCC") in connection with its grant of eligible telecommunications carrier ("ETC ") status to Pine Cellular.

On August 22, 2006, the OCC designated Pine Cellular an ETC in the Alltel Oklahoma, Inc. ("Alltel") rural exchanges of Battiest and Smithville, subject to the redefinition approval of the Commission. Redefinition of the Alltel study area is necessary for Pine Cellular to receive FUSF for the Battiest and Smithville exchanges. The OCC has determined that it is in the public interest to redefine the Alltel study area. In addition to the OCC approval, 47 C.F.R. 54.207(c) requires agreement with the redefinition by the Commission. Redefinition of the service area requirement for the Battiest and Smithville exchanges will promote the universal service goals of the Telecommunications Act of 1996. Pine Cellular respectfully requests that the Commission approve the redefinition of the service area requirement, pursuant to Section 54.207(c). This will enable Pine Cellular to receive FUSF support to facilitate the provision of competitive telephone services and

promote further access to advanced services to rural consumers located in Battiest and Smithville, Oklahoma.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	
)	
Pine Cellular Phones, Inc. Petition for Agreement)	CC Docket
No. 96-45		
With Redefinition of Service Area of Alltel Oklahoma)		
Inc. in the State of Oklahoma)	
Pursuant to 47 C.F.R. § 54.207(c))	

**PINE CELLULAR PHONES, INC.
PETITION FOR AGREEMENT WITH REDEFINITION
OF SERVICE AREA OF ALLTEL OKLAHOMA, INC.**

Pine Cellular Phones, Inc. ("Pine Cellular") respectfully requests the agreement of the Federal Communications Commission ("Commission"), pursuant to 47 C.F.R. § 54.207(c), with the redefinition of the Alltel Oklahoma, Inc. ("Alltel") study area approved by the Oklahoma Corporation Commission ("OCC") in connection with its grant of eligible telecommunications carrier ("ETC ") status to Pine Cellular.¹ A copy of the Pine Cellular ETC Order issued by the OCC is included as Attachment 1 to this Petition. The OCC's redefinition of the Alltel study area is consistent with federal law and the Commission's regulations. The Commission's prompt concurrence will serve the public interest.

¹ *Application of Pine Cellular Phones, Inc. for Certification as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, Cause No. PUD 200500467, Order No. 528700, (August 22, 2006), ("Pine Cellular ETC Order")

I. BACKGROUND

Pine Cellular is a facilities-based carrier and will provide customers in Battiest and Smithville with universal service offerings throughout the designated areas using its own network facilities, and when necessary, resale of ILEC services. On August 22, 2006, the OCC granted Pine Cellular's application for ETC designation in the Battiest and Smithville exchanges for Federal Universal Service Fund ("FUSF") purposes, subject to FCC redefinition approval. In the Pine Cellular ETC Order the OCC found that Pine Cellular has met all of the federal requirements for purposes of being designated an ETC and that such designation was in the public interest.

The Battiest and Smithville exchanges are in the Alltel study area that is designated as rural. It should also be noted that these two Alltel Exchanges are located in the southeast corner of Oklahoma and while adjacent to one another are not contiguous with any other Alltel exchanges.² For rural carriers the service area is defined as the ILEC's study area.³ However, Section 54.207(b) of the Commission's rules permits a state commission to designate ETCs for a service area that differs from a rural ILEC's study area. The OCC has determined that it is in the public interest

² In its 1997 Universal Service Order at para. 190, *In re Federal-State Joint Board on Universal Service*, 12 FCCR 8,776 (1997) the FCC concluded that "universal service policy objectives may be best served if a state defines rural service areas to consist only of the contiguous portion of a rural study area, rather than the entire rural study area." The FCC further concluded in the 1997 Order that "requiring a carrier to serve a noncontiguous service area as a prerequisite to eligibility might impose a serious barrier to entry, particularly for wireless carriers."

³ See, Section 214(e)(5) of the Federal Act and 47 C.F.R. §54.207(b)

to redefine the Alltel study area in the Pine Cellular ETC Order issued August 22, 2006.

If the state commission designates service areas that differ from the study area definition, Section 54.207(c) provides that such designations will take effect subject to agreement by the Commission. Specifically, Section 54.207(c) requires the following:

“If a state commission proposes to define a service area served by a rural telephone company to be other than such company's study area, the Commission will consider that proposed definition in accordance with the procedures set forth in this paragraph.

(1) A state commission or other party seeking the Commission's agreement in redefining a service area served by a rural telephone company shall submit a petition to the Commission. The petition shall contain:

(i) The definition proposed by the state commission; and

(ii) The state commission's ruling or other official statement presenting the state commission's reasons for adopting its proposed definition, including an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company.”

As required in Section 54.207(c) in making and agreeing to such designations, the Commission and the state commission each must give full consideration to the Joint Board's recommendations and explain their rationale for redefining the service or study area. The Joint Board has recommended three items for consideration by the Commission when

evaluating redefinition of study areas: “(1) Minimizing cream skimming; (2) Recognizing that the 1996 Act places rural telephone companies on a different competitive footing from other LECs; and (3) Recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than a study area level.”⁴ Pine Cellular will provide further information below regarding how the redefinition accounts for the criteria established by the Joint Board.

II. THE STUDY AREA REDEFINITION FOR ALLTEL MEETS THE CRITERIA ESTABLISHED BY THE JOINT BOARD

With regard to the evaluation of the Joint Board criterion concerning minimizing “cream skimming,” the OCC in evaluation of the study area redefinition reviewed and analyzed the population density analysis that was performed by Pine Cellular based upon the analysis criteria that was introduced in the *Virginia Cellular* Order. The “cream skimming” opportunity is presented when an ETC elects to only serve the low cost wire centers in an ILEC’s study area and avoids serving the high cost areas. Since, generally, FUSF support is averaged across the entire study area, an ETC by serving the lower-cost wire centers could get support that is higher than the incumbent’s actual costs for serving these areas. In the *Virginia Cellular* Order, the Commission used population density as a proxy for

⁴ *Federal-State Joint Board on Universal Service Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd, Para. 41 (2004) (“*Virginia Cellular*”)

determining high and low cost areas. Typically, wire center areas with low population densities are high-cost service areas and wire centers with high population densities are low-cost service areas. Thus, if an ETC focused on serving only the wire center areas with high or above average population densities, a cream skimming opportunity may exist.

In the population density analysis provided to OCC Staff for evaluation, the data showed that the average number of lines per square mile throughout Alltel's study area is roughly 4.1, and that the Battiest and Smithville exchanges were computed as approximately 1.6 and 3.3 respectively. Thus, Pine Cellular is not serving the lower cost, higher density wire centers in Alltel's study area, but is serving lower density, higher cost exchanges; creating little, if any, opportunity for "cream skimming."⁵

The OCC noted that Pine Cellular has not requested designation below the exchange level (i.e. wire center), but rather has asked to be designated an ETC in all of Alltel's exchanges in which it serves the entire exchange.⁶ Further the OCC found that the designation of Pine Cellular as an ETC within these two Alltel exchanges will offer rural consumers affordable services comparable to those provided in urban areas, and that subscribers to wireless service are able to access emergency services while away from their homes, all of which is in the public interest.⁷

⁵ *Pine Cellular ETC Order* at p. 2, adopting the *Report of the Administrative Law Judge* (Attachment "A", at p. 5).

⁶ *Id.*

⁷ *Id.*

With regard to the Act's recognition of the different competitive footing of rural LECs, the redefinition of Alltel's service territory will not harm Alltel. The high-cost universal service mechanisms support all lines served by ETCs in rural areas. Under the Commission's rules, receipt of high-cost support by Pine Cellular will not affect the total amount of high-cost support that Alltel receives. Therefore, to the extent that Pine Cellular captures Alltel lines, provides new lines to currently unserved customers, or provides second lines to existing wireline subscribers, it will have no impact on the amount of universal service support available to Alltel for those lines they continue to serve. Similarly, redefining the service areas of Alltel will not change the amount of universal service support that is available to Alltel.

There are no administrative burdens imposed by redefining the Alltel study area. As the FCC has previously recognized, redefinition of service or study areas by wire centers does not require that rural telephone companies determine their cost on a basis other than the study area level.⁸ Rural telephone companies may continue to calculate costs on a study area basis. The rural LEC is free to decide whether it is in its best interest to calculate costs in a manner other than a study area basis.

⁸ See, *In the Matter of Federal State Joint Board on Universal Service: RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its licensed Service Area In the State of Alabama*, Released: November 27, 2002, Para. 41.

III. CONCLUSION AND REQUEST FOR COMMISSION APPROVAL OF THE STUDY AREA REDEFINITION

In accordance with Section 54.207(c), this Petition provides the study area redefinition and the relevant Order of the OCC concerning this definition as well as analyses that take into account the recommendations of the Joint Board. This information substantiates that redefinition of the Alltel study area, specifically the Battiest and Smithville exchanges, is in the public interest. The study area redefinition will enable Pine Cellular to provide universal service offerings, thereby allowing competitive choices to rural customers located in Battiest and Smithville, Oklahoma. Additionally, approval of the study area redefinition will facilitate the further availability of advanced services to customers located in these two exchanges.

Pine Cellular Phones, Inc. respectfully requests that the Commission approve the Alltel study area redefinition.

Respectively Submitted,

PINE CELLULAR PHONES, INC.

By: _____

—

Kimberly K. Brown
KIMBERLY K. BROWN, P.C.
2212 N.W. 50th, Suite 165
OKLAHOMA CITY, OK 73112
TELEPHONE: (405) 286-3094
EMAIL: kkblaw@cox.net

*ATTORNEY FOR PINE
CELLULAR PHONES, INC.*